



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462

(757) 518-2000 Fax (757) 518-2009

www.deq.virginia.gov

Doug Domenech
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO

COMMANDER, NAVY REGION MID-ATLANTIC

EPA ID No. VA6170061463

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and the Commander, Navy Region Mid-Atlantic, for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and -1401.
2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
3. "CNRMA" means Commander, Navy Region Mid-Atlantic.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
7. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
8. "LQG" means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(a)-(b) and (g)-(l).
9. "Navy" means the United States Department of the Navy. Navy is a 'person' within the meaning of Va. Code § 10.1-1400.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
11. "NSN" means the Naval Station Norfolk, with the listed address of 9742 Maryland Ave, Norfolk, Virginia.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
13. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
14. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effected date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.
15. "Va. Code" means the Code of Virginia (1950), as amended.
16. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. NSN is a Navy installation located in Norfolk, Virginia. In general, NSN supports the operational readiness of the Atlantic Fleet, providing facilities and services to enable mission accomplishment. Operations at NSN are subject to the Virginia Waste Management Act and the Regulations.
2. NSN is a generator of hazardous waste from the operation and maintenance of naval ships and the installation itself. Such wastes include halogenated and non-halogenated solvents, corrosives, batteries (some reactive), paint wastes, contaminated petroleum/oil/lubricants, and off-spec, excess, or out-of-date commercial chemical products. CNRMA is a permitted federal treatment, storage and disposal ("TSD") facility and a LQG and was issued EPA Identification Number VA6170061463.
3. CNRMA is a Navy shore command encompassing Navy installations in several States, including all in Virginia. CNRMA was issued a TSD facility permit ("Permit") for NSN effective September 20, 1994; the Permit was revoked and reissued on October 23, 2006. The Permit allows for the storage of hazardous waste in specific buildings at NSN.
4. On February 19, 2010, Navy environmental program personnel contacted DEQ by telephone and self-reported the discovery of one tri-wall container (597 lbs) containing hazardous waste paint in the less than 90-day accumulation area of Building LP-24 that had exceeded the 90-day storage period. Reportedly, Navy environmental personnel discovered the tri-wall container of hazardous waste paint on February 18, 2010, with an accumulation start date of October 19, 2009, and transferred the tri-wall container of hazardous waste paint to the TSD facility, also located in Building LP-24. The tri-wall container of hazardous waste paint was stored in the 90-day accumulation area for 122 days, 32 days over the 90-day storage limit.
5. A review of DEQ files indicated that the portion of Building LP-24 at which the tri-wall container containing hazardous waste paint was stored was designated as a less than 90-day accumulation area and is not part of the permitted TSD facility. Furthermore, NSN was not granted interim status for that portion of Building LP-24, nor did Navy environmental personnel request an extension to the 90-day storage period for the tri-wall container of hazardous waste paint.
6. 40 CFR 262.34(a) and 9 VAC 20-60-262 allow a generator to accumulate hazardous waste on site for 90 days or less without a permit or without having interim status, provided that specified container management, personnel training, and contingency planning conditions are met.
7. 40 CFR 262.34(b) and 9 VAC 20-60-262 state that a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is

subject to the requirements of 40 CFR Parts 264 and 265 and the permit requirements of 40 CFR 270 unless he has been granted an extension to the 90-day period.

8. On March 17, 2010, CNRMA submitted a written response to the incident described above noting that the tri-wall container containing hazardous waste paint was intact and labeled. In the letter, Navy environmental personnel discussed corrective actions taken, including quarterly manual reconciliation of hazardous waste inventory stored in LP-24, training for staff responsible for hazardous waste management, and assigning of additional staff to assist with weekly and monthly inspections.
9. On April 2, 2010, based on the initial February 19, 2010 report and follow-up information, the Department issued a Notice of Violation to CNRMA for the violations described in paragraphs C(4) through C(7), above.
10. On April 30, 2010, Department staff met with Navy environmental staff to discuss the violations, including CNRMA's written response. During the meeting, Navy environmental personnel discussed additional corrective actions taken, including the revision of NSN's hazardous waste management guide and the revision of inspection checklists.
11. Based on the initial report on February 19, 2010, the March 17, 2010 letter, and the April 30, 2010 meeting, the Board concludes that CNRMA has violated the Regulations, as described in paragraphs C(4) through C(7), above.
12. CNRMA has submitted documentation that verifies that the violations in paragraphs C(4) through C(10), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code § 10.1-1455, the Board orders CNRMA and CNRMA agrees to pay a civil charge of \$8,610.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

CNRMA shall include its Federal Employer Identification Number (FEIN) [_____] with the civil charge payment and shall indicate that the payment is being made in

accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of CNRMA for good cause shown by CNRMA, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For the purposes of this Order and subsequent actions with respect to this Order only, CNRMA admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law contained herein.
4. CNRMA acknowledges that any civil action taken by the Board to enforce the terms of this Order will be in the Circuit Court of the City of Richmond. However, CNRMA does not waive any rights it may have to seek removal of such action to Federal court pursuant to 28 United States Code §§ 1441 *et seq.*
5. CNRMA declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by CNRMA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. CNRMA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake,

flood, other acts of God, war, strike, or such other occurrence. CNRMA shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. CNRMA shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the TRO Regional Director within 24 hours and in writing within three business days, of learning of any condition above, which CNRMA intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and CNRMA. Nevertheless, CNRMA agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. CNRMA petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to CNRMA

Termination of this Order, or any obligation imposed in this order, shall not operate to relieve CNRMA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. In accordance with the Federal Anti-Deficiency Act, the obligations of the Navy under this section are expressly conditioned on the availability of Congressional

appropriations, which CNRMA agrees to seek in amounts sufficient to timely accomplish these undertakings. If sufficient appropriations are not available and cannot be obtained, CNRMA will promptly inform the DEQ Regional Director. In such case, the Director may terminate the Order and take other action, if so desired, or amend the Order with CNRMA's consent or in accordance with the Administrative Process Act.

13. Any plans, reports, schedules or specifications attached hereto or submitted by CNRMA and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
14. The undersigned representative of CNRMA certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind CNRMA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of CNRMA.
15. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between parties other than those expressed in this Order.
16. By its signature below, CNRMA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 30th day of September, 2010.


Francis L. Daniel

Commander, Navy Region Mid-Atlantic voluntarily agrees to the issuance of this Order.

By: Cherryl F. Barnett

Date: 8/27/10

Commonwealth of Virginia

City/County of Norfolk

The foregoing document was signed and acknowledged before me this 27th day of
August, 2010, by Cherryl F. Barnett,
(month) (name)

Environmental Program Director, on behalf of Commander, Navy Region Mid-Atlantic.
(title)

Angela M. Caraker
Notary Public

My commission expires: October 31, 2014



Angela Marie Caraker
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7335538
My Commission Expires
October 31, 2014